

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

NANCY DREW SUDERS)	NO. 1:CV-00-1655
)	
Plaintiff)	
)	
Vs.)	
)	Judge Rambo
PENNSYLVANIA STATE POLICE))	
)	
Defendants)	JURY TRIAL DEMANDED

PLAINTIFF'S OBJECTIONS TO DEFENDANTS' BILL OF COSTS

AND NOW, comes the plaintiff Nancy Drew Suders, by and through her attorney, Don Bailey and in support of their Objections to Defendants' Bill of Costs aver as follows:

- 1.) On March 31 and April 7, 2005 this Court entered judgment in favor of the Defendants based upon a jury verdict.
- 2.) On April 27, 2005, Defendants filed a Bill of Costs with the Court to be assessed against plaintiff.
- 3.) Fed.R.Civ.P. 54(b)(1) vests the Court with the authority to not grant costs claimed by the prevailing party. Costs should not be assessed where the non-prevailing party shows that the award of costs is inequitable under the circumstances. In re *Paoli R.R. Yard PCB Litigation*, 221 F.3d 449, 462-463 (3d Cir 2000).

4.) Plaintiff requests that this Court refrain from assessing costs against her, because it is fundamentally unfair particularly since the costs were incurred due to decisions of the Defendants in litigation strategy which plaintiff believes were excessive.

For example, the defendants choose to duplicate, for no reason other than to be obstreperous with counsel, the depositions they seek costs from and then charge the plaintiff the higher rates they paid when there was no need to do so. They could have purchased copies from plaintiff's video depositions taken at .20 per page (\$1.65) less than even the copy rate of their own stenographer.

5.) In the alternative, plaintiff asks this Court to reduce the assessment of costs against Nancy Drew Suders to reflect an amount which would be equitable. Plaintiff objects to assessment of the following costs against her on the basis that it would be fundamentally unfair to charge her with:

a.) The bill of costs Exhibit "A" reflects charges of \$419.02 for the Itemization of Witness Fees of Eric Easton, Jody Lancaster, Gary Barach and Virginia Smith Elliott in reference to their appearance at trial. In reference to Eric Easton and Jody

Lancaster, the plaintiff served subpoena on Easton, Lancaster and these individuals were paid the witness fees and mileage and are not entitled to be paid twice for their service at trial. The witness Gary Barach was PSP's own expert witness whom they chose to appear at trial on their behalf and was paid extremely well for his appearance by PSP. PSP witness Virginia Smith Elliott was the defendants own witness whom they chose to call, plaintiff attempted to serve this witness and was given the incorrect address from the defendants' own counsel, Smith Elliott was never served nor used at trial by the plaintiff except on cross. The plaintiff should not have to incur charges for the defendants' strategy in litigating their own case.

- b.) The bill of costs Exhibit "B" reflects a charge of \$4.20 for copies, \$20.00 for Dockets fees, which defendants do not even define. What is she being charged for?

c.) An original per page deposition cost in the area is \$2.85 per page (original) and a (copy) rate is \$1.85 per page based upon what most court reporters charges in the area. This does not include appearance fees and mileage fees and mileage that stenographers charge. The video deposition conducted by plaintiff average significantly less than stenographers in all areas. No mileage or appearance fees are charged.

For example the deposition of Eric Easton, William Baker, Eric Prendergast, Virginia Smith Elliott, Christine Davis, and Mikeal Fix were taken on February 21 and 23, 2001 and were all taken by the plaintiff. All of these depositions would have been a copy rate for the defendants in this matter. The going rate for a copy rate is \$1.85 per page. For example, Easton (76) pages \$140.60, Baker (53) pages \$98.05, Prendergast (55) pages \$101.75, Davis (56) \$103.60, Fix (35) pages \$64.75, Elliott (44) pages \$81.40, and Suders (194) pages

\$455.90. The appearance fee of \$75.00 and mileage fee totaling \$102.40 are not the responsibility of the plaintiff in this matter and she should not have to pay for a court reporter that was chosen from 160 miles away from Harrisburg to attend a deposition. “Plaintiff notes the depositions were held in plaintiff’s counsel office in Harrisburg”.

The costs should be corrected lower to reduce the charge to the plaintiff for costs incident to taking depositions in an amount no greater than \$796.30.

6.) The plaintiff requests that if the taxation of costs is granted in this case, that the amount to be awarded to the defendants should be reasonable and fair. The plaintiff believes that the total amount that should be awarded, if necessary is \$796.30.

7.) Further, costs should not be awarded here. Plaintiff merely asked for an opportunity to be heard and prevailed in that request.

WHEREFORE the plaintiff requests that this Honorable Court grant the plaintiff relief from the assessment of the costs charge by the defendants, or in the alternative, impose a cost to be charged which

would be fundamentally fair to the plaintiff who is lacking in resources.

RESPECTFULLY SUBMITTED,

BAILEY & OSTROWSKI

By: s/Don Bailey, Esquire
4311 N. 6th Street
Harrisburg, PA 17110
(717) 221-9500

CERTIFICATE OF SERVICE

I, Don Bailey do hereby certify that on May 4, 2005 I served a true and correct copy of *PLAINTIFF'S OBJECTION TO COSTS* to the attorney listed below by Electronic Means:

***SARAH YERGER ESQUIRE
SENIOR ATTORNEY GENERAL
ATTORNEY GENERALS OFFICE
15TH FLOOR, STRAWBERRY SQUARE
HARRISBURG, PA 17120***

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